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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER	
LONG, ANDREA NATAE	

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mkraft@hp.com
ipa.mail@hp.com

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/642,506
Filing Date: August 18, 2003
Appellant(s): SEIFERT, CHRISTIAN SEBASTIAN

Benjamin J. Hauptman, Reg. No. 29,310
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07/31/2008 appealing from the Office action mailed 03/17/2008.

(1) Real Party in Interest

A statement identifying by name the real party of interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

The amendment after final rejection filed on 07/31/2008 has been entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,128,006	Rosenberg	3-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-5 and 8-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosenberg et al. (US Patent 6,128,006).

As to dependent claim 1, Rosenberg teaches a graphical user computer interface wherein said pointing device comprises a two-dimension actuator (Fig 1 reference character 12,

column 6 lines 17-22), and a one-dimension actuator (Fig 1 reference character 16, column 4 lines 43-64),

the interface is arranged such that the two-dimension actuator controls movements of the pointer when said menu is not opened (column 16 lines 54-57) , and

the one-dimension actuator is activated, when the menu is opened, to control movement of the menu item focus within the menu (column 17 lines 32-38).

As to dependent claim 3, Rosenberg teaches that the menu is opened by positioning the pointer on a displayed element, associated with the menu, with clicking on the element (column 4 lines 40-41, column 17 lines 30-32).

As to dependent claim 4, Rosenberg teaches wherein the menu item is activated by positioning the focus thereon, with clicking on the menu item (column 5 lines 8-11, column 17 lines 32-38).

As to dependent claim 5, Rosenberg teaches an operational shift from a pointer modus to a menu item focus modus is activated automatically upon opening of the menu (column 17 lines 30-38→ Rosenberg discloses a pointer being operated by a mouse can be automatically disable once the menu has been opened then an item selection bar can be utilized for selecting a menu item).

As to dependent claim 8, Rosenberg teaches that an operation modus shifts from a menu item focus modus back to a pointer modus upon closing of the menu. It is inherent that upon closing of the menu would eliminate the highlighter/menu item selection bar, which the mouse that controls the movement of the pointer would be enabled.

As to dependent claim 9, Rosenberg teaches wherein the one-dimension actuator is a wheel (column 17 lines 32-34).

As to independent claim 10, Rosenberg teaches graphical user computer interface enabling a user to open at least one menu (Fig. 9, column 17 lines 30-32) and to select an item of the menu by means of a pointing device (column 17 lines 32-36), said pointing device controlling a moveable pointer (cursor, column 16 lines 54-57) and a moveable menu item focus (column 17 lines 36-38),

wherein the interface is arranged such that, after the menu has been opened, the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer (column 7 lines 52-54, column 17 lines 30-38).

As to claim dependent 11, Rosenberg teaches that the menu is opened by positioning the pointer on a displayed element, associated with the menu, with clicking on the element (column 4 lines 40-41, column 17 lines 30-32).

As to dependent claim 12, Rosenberg teaches that the menu item is activated by positioning the focus thereon, with clicking on the menu item (column 5 lines 8-11, column 17 lines 32-38).

As to dependent claim 13, Rosenberg teaches that an operational shift from a pointer modus to a menu item focus modus is activated automatically upon opening of the menu (column 17 lines 30-38→ Rosenberg discloses a pointer being operated by a mouse can be automatically disable once the menu has been opened then an item selection bar can be utilized for selecting a menu item).

As to dependent claim 14, Rosenberg teaches that the menu item focus is movable while the menu is fixed, by operating the pointing device (Fig 9, column 17 lines 30-38).

As to dependent claim 15, Rosenberg teaches that the menu is closed by a relative movement of the menu item focus out of the menu, by operating the two-dimension actuator, or by selecting a menu closing item with the two-dimension actuator. As discussed above Rosenberg allows the one or two dimension actuator to select a menu item. It's implicitly implied if the menu item correlates to an exit as displayed in Fig 9 or close menu item the menu would close).

As to dependent claim 16, Rosenberg teaches wherein the pointing device is a computer-mouse (column 6 lines 17-20).

As to dependent claim 17, Rosenberg teaches wherein said pointing device comprises a two-dimension actuator (mouse) and a one-dimension actuator (wheel),

the interface is arranges such that the two-dimension actuator controls movements of the pointer when said menu is not opened (column 16 lines 54-57), and

the one-dimension actuator is activated, when the menu is opened, to control movement of the menu item focus within the menu (column 17 lines 32-38).

As to independent claim 18, Rosenberg teaches a computer (Fig. 1 reference character 18) comprising a display (Fig 1 reference character 20) and a pointing device (Fig 1 reference character 12), wherein said computer is programmed to provide a graphical user interface enabling a user to open at least one menu in the display (Fig. 9, column 17 lines 30-32) and to select an item of the menu by means of the pointing device (column 17 lines 32-36),

the pointing device controls a moveable pointer (cursor, column 16 lines 54-57) and a moveable menu item focus (column 17 lines 36-38), and

after the menu has been opened and while the menu is being opened, the pointer stays at the position the pointer was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer (column 17 lines 30-38).

As to dependent claim 19, Rosenberg teaches wherein said pointing device comprises a two-dimension actuator (Fig 1 reference character 12, column 6 lines 17-22), and a one-dimension actuator (Fig 1 reference character 16, column 4 lines 43-64),

the interface is arranged such that the two-dimension actuator controls movements of the pointer when said menu is not opened (column 16 lines 54-57) , and

the one-dimension actuator is activated, when the menu is opened, to control movement of the menu item focus within the menu (column 17 lines 32-38).

As to independent claim 20, a computer-readable medium containing thereon programming code which, when executed on a computer system, is arranged

to enable a user to open at least one menu in a display of said computer system and to select an item of the menu by means of a pointing device of said computer system (Figs. 4 and 9, column 17 lines 30-36),

to enable said pointing device to control a moveable pointer and a moveable menu item focus (column 16 lines 54-57, column 17 lines 36-38), and

after the menu has been opened and while the menu is being opened, to keep the pointer stationary, regardless of operation of the pointing device, at the position said pointer was in when the menu was opened, while enabling the menu item focus to be moveable within the menu by means of the pointing device without moving the pointer (column 17 lines 30-38).

As to independent claim 21, Rosenberg teaches a method for enabling a user of a graphical user computer interface to open at leas one menu and to select an item of the menu by means of a pointing device (Figs. 4 and 9, column 17 lines 30-36), said pointing device having a two-dimension actuator (mouse) and a one-dimension actuator (wheel) and controlling a moveable pointer and a moveable menu item focus, said method comprising;

when the menu is not opened, controlling movements of the pointer with the two-dimension actuator (column 16 lines 54-57), and

when the menu is opened, activating the one-dimension actuator to control movement of the menu item focus within the menu, while enabling the two-dimensional actuator to control movements of both the menu item focus and the pointer within the menu (column 7 lines 54-57, column 19 line 45 through column 20 line 23 – taught as the functions controlled by the wheel can be synchronized or added to functions controlled by planar movement of mouse).

As to independent claim 22, claim 22 incorporates substantially similar subject matter as claim 10 and in rejected under the same rationale.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg.

As to dependent claim 7, Rosenberg teaches that the menu is closed by selecting a menu closing item with the one-dimension actuator or the two-dimension actuator. (Fig. 9) Rosenberg does not teach that the menu is closed by a relative movement of the menu item

focus out of the menu. It is reasonably suggestive for one skilled in the art, for a user to use a scroll wheel to scroll through menu items and if a user scrolls past the last menu item, then the menu will close, such as that of using a mouse pointer that will close a menu when the pointer is out of the menu area. The motivation of having a scroll wheel that will close a menu by a relative movement of the wheel is to eliminate additional input actions by the user.

As to dependent claim 23, Rosenberg teaches that the menu is closed by selecting a menu closing item within the menu with the one-dimension or two-dimension actuator. As discussed above Rosenberg allows the one or two dimension actuator to select a menu item. Fig. 9 displays an "exit" menu item in the menu, which will cause the user to exit the system, which ultimately closes the menu. It would be reasonably suggestive to one skilled in the art to have a menu with a "close" menu item for selection that would close the menu such as that of pop-up or boxed menus, for quick closing of a menu.

As to dependent claim 24, Rosenberg teaches that the menu is closed by selecting a menu closing item within the menu with the one-dimension or two-dimension actuator. As discussed above Rosenberg allows the one or two dimension actuator to select a menu item. Fig. 9 displays an "exit" menu item in the menu, which will cause the user to exit the system, which ultimately closes the menu. It would be reasonably suggestive to one skilled in the art to have a menu with a "close" menu item for selection that would close the menu such as that of pop-up or boxed menus, which are selectable by a mouse pointer, due to the lack of a wheel to move in any other direction other than up and down, for quick closing of a menu.

(10) Response to Argument

Beginning on page 8 of the Appeal Brief (hereinafter the Brief), Appellant argues the following issues which are accordingly addressed below.

First Ground of Rejection – 35 U.S.C. 102(b) rejection of claims 1, 3-5 and 8-22 as being anticipated by Rosenberg

Independent claim 10

Appellant argues that Rosenberg fails to teach or disclose each and every element of the rejected claim, specifically the limitation "the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer". Appellant references an embodiment of Rosenberg's invention $Y_{cursor} = Y_{mouse} + Y_{wheel}$, which implies that he manipulation of the wheel to move the highlighter up or down, will move the cursor.

The Examiner respectfully disagrees.

The disputed claim language reads:

A graphical user computer interface enabling a user to open at least one menu and to select an item of the menu by means of a pointing device, said pointing device controlling a moveable pointer and a moveable menu item focus,

wherein the interface is arranged such that , after the menu has been opened, the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer.

First it should be noted that the Appellant basis his argument on an embodiment of Rosenberg that is not being used by the Examiner for rejecting independent claim 10. Rosenberg teaches a wheel (one dimension actuator) and a mouse/cursor (two dimensional actuator). Rosenberg further provides two distinct methods in which the wheel and mouse/cursor can operate (independently of each other or in conjunction). For claim 10, Rosenberg is used to teach wherein the wheel and mouse/cursor operate independently of each other. Rosenberg discloses when a menu is opened by the mouse/cursor that the vertical motion of the mouse can be disable while the menu is displayed and control of a highlighter can be moved up and down by rotating the wheel. It should be made clear that since the wheel only has vertical movement that horizontal movement is not possible by the wheel. While Rosenberg clearly teaches the wheel and mouse/cursor being independent of each other (column 7 lines 52-54), even if the wheel and mouse/cursor took on the alternative method of Rosenberg which is to operate in conjunction with each other, the mouse/cursor vertical movement would still be disabled once the menu is open, for the highlighter to control movement within the menu and since the wheel does not have horizontal movement then the mouse/cursor will not have capability of moving horizontally. Figure 9 provides a visual representation of Rosenberg's invention. The highlighter 210 is clearly distinct and separate from the pointer 204. One skilled in the art looking at the picture can infer that if the pointer and the highlighter moved together by

operation of the wheel, as asserted by the Appellant, then the mouse pointer would be positioned with the highlighter. Therefore Rosenberg teaches "the pointer stays at the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer".

It is noted that Appellant's arguments are based on the alternative mode of Rosenberg's invention which is for the wheel and mouse/cursor to operate in conjunction with each other. However the Examiner's analysis is based on Rosenberg's use of the wheel and mouse/cursor being used independently of each other.

Additionally, it is brought to the Board's attention that a user has control over the movement of the mouse, which is known to one skilled in the art. If a user therefore chooses only to manipulate the wheel of the pointing device when a menu is opened, then the pointer would remain stationary since the wheel which operates the highlighter is independent of the pointer.

Claims 1, 3-5, 8-9, and 11-16 which depend from claim 10 and claims 17-20 which include limitations similar to those of claim 10 are anticipated by Rosenberg, as applied by the Examiner, for at least the reasons presented with respect to claim 10.

Claim 15

Appellant argues that Rosenberg fails to teach or disclose that the menu is closed by (i) a relative movement of the menu item focus out of the menu, by (ii) operating the two-dimension

actuator, or by (iii) selecting a menu closing item with the two-dimension actuator". Appellant argues that for Rosenberg to meet the limitation of operation (iii), would require the pointer to move while the menu is open, thereby contradicting the requirement of claim 10 that the pointer stay where it was.

The Examiner respectfully disagrees.

The disputed claim language reads:

The graphical user computer interface of claim 10, arranges such that the menu is closed by a relative movement of the menu item focus out of the menu, by operating the two-dimension actuator, or by selecting a menu closing item with the two-dimension actuator.

Claim 15 as currently recited only requires one of the limitations to be met. Rosenberg is used to teach limitation (iii) selecting a menu closing item with the two-dimension actuator. This can be implicitly implied by Figure 9 which shows an "Exit" menu item. Rosenberg implicit use of the mouse/cursor to close the menu item would not contradict the presently recited limitation of claim 10 which requires the pointer to stay in the position it was in when the menu was opened, while the menu item focus is moveable within the menu by means of the pointing device without moving the pointer. As discussed above in claim 10, when the menu is opened the control of movement through the menu items is operated by the wheel. However this does not prevent the use of the user moving the mouse. It is noted that the claim language of claim 10 does not recite that the pointer is disabled, but that it stays in the position it was in when the

menu was opened. The mouse still has available movement independently of the wheel, and therefore can be operated by the user to select the "Exit" menu item.

Independent claim 20

Appellant argues that Rosenberg fails to teach or disclose each any every element of the rejected claim, e.g., "after the menu has been opened and while the menu is being opened, to keep the pointer stationary, regardless of operation of the pointing device, at the position said pointer was is in when the menu was opened, while enabling the menu focus item to be moveable within the menu by means of the pointing device without moving the pointer".

The Examiner disagrees.

The disputed claim language reads:

A computer readable medium containing thereon program code which, when executed on a computer system, is arranged

to enable a user to open at least one menu in a display of said computer system an to select an item of the menu by means of a pointing device of said computer system, to enable said pointing device to control a moveable pointer and a moveable menu item focus, and

after the menu has been opened and while the menu is being opened, to keep the pointer stationary, regardless of operation of the pointing device, at the position said pointer was in when the menu was opened, while enabling the menu item focus to be moveable within the menu by means of the pointing device without moving the pointer.

Rosenberg teaches a wheel (one dimension actuator) and a mouse/cursor (two-dimensional actuator). Rosenberg further provides two distinct methods in which the wheel and mouse/cursor can operate (independently of each other or in conjunction). For claim 20, Rosenberg is used to teach wherein the wheel and mouse/cursor operate independently of each other. Rosenberg discloses when a menu is opened by the mouse/cursor that the vertical motion of the mouse can be disable while the menu is displayed and control of a highlighter can be moved up and down by rotating the wheel. It should be made clear that since the wheel only has vertical movement that horizontal movement is not possible by the wheel. While Rosenberg clearly teaches the wheel and mouse/cursor being independent of each other (column 7 lines 52-54), even if the wheel and mouse/cursor took on the alternative method of Rosenberg which is to operate in conjunction with each other, the mouse/cursor vertical movement would still be disabled once the menu is open, for the highlighter to control movement within the menu and since the wheel does not have horizontal movement then the mouse/cursor will not have capability of moving horizontally.

It is noted that while Rosenberg does not explicitly teach to keep the pointer stationary, regardless of operation of the pointing device, it is implicitly inferred to one of skilled artisan. It is reasonable to infer that Rosenberg only explicitly discloses enabling the vertical movement of the mouse because horizontal movement of the highlighter is not needed in his invention.

Claim 19 which depends on claim 20 is anticipated by Rosenberg, as applied by the Examiner, for at least the reasons presented with respect to claim 20.

Independent claim 21

Appellant argues Rosenberg fails to teach or disclose each and every element of the rejected claim, e.g., "when the menu is opened, activating the one-dimensional actuator to control movement of the menu item focus within the menu, while enabling the two-dimension actuator to control movements of both the menu item focus and the pointer within the menu." Appellant asserts that Rosenberg fails to teach where the highlighter 210 is controllable by mouse 12/32, or that the cursor 204 is controllable by mouse 12/32 within menu 206.

The Examiner disagrees.

The disputed claim language reads:

A method of enabling a user of a graphical user computer interface to open at least one menu and to select an item of the menu by means of a pointing device, said pointing device having a two-dimension actuator and a one-dimension actuator and controlling a moveable pointer and a moveable menu item focus, said method comprising:

when the menu is not opened, controlling movements of the pointer with the two-dimension actuator. and

when the menu is opened, activating the one-dimension actuator to control movement of the menu item focus within the menu, while enabling the two-dimension actuator to control movements of both the menu item focus and the pointer within the menu.

Rosenberg discloses that the functions controlled by wheel can be synchronized or added to functions controlled by planar mouse movement. Additionally disclosed is individual menu items in a pull down menu may be selected by the user using the cursor. Once the pull-down menu has been displayed, the selection of menu item can be controlled by wheel moving the cursor.

It is pointed out that the disablement of the mouse is an *optional function* (emphasis added) provided by Rosenberg. However the function/embodiment the Examiner uses for the rejection of the claim limitations is wherein the mouse controls movement of the cursor within the menu, which is also supported by the Appellant's argument on page 9.

Independent claim 22

Appellant asserts that Rosenberg fails to teach or disclose "after having opened the menu and while the menu is being opened, enabling the menu item focus to be moved within the menu by means of the pointing device while disabling the pointing device from moving the pointer".

The Examiner disagrees.

The disputed claim language reads:

A method of enabling a user of a graphical user computer interface to open at least one menu and to select an item of the menu by, means of a pointing device, said method comprising:

controlling a moveable pointer and a moveable menu item focus by the pointing device,

after having opened the menu and while the menu is being opened, enabling the menu item focus to be moved within the menu by means of the pointing device while disabling the pointing device from moving the pointer.

Rosenberg teaches a wheel (one dimension actuator) and a mouse/cursor (two-dimensional actuator). Rosenberg further provides two distinct methods in which the wheel and mouse/cursor can operate (independently of each other or in conjunction). For claim 22, Rosenberg is used to teach wherein the wheel and mouse/cursor operate independently of each other. Rosenberg discloses when a menu is opened by the mouse/cursor that the vertical motion of the mouse can be disable while the menu is displayed and control of a highlighter can be moved up and down by rotating the wheel. It should be made clear that since the wheel only has vertical movement that horizontal movement is not possible by the wheel. While Rosenberg clearly teaches the wheel and mouse/cursor being independent of each other (column 7 lines 52-54), even if the wheel and mouse/cursor took on the alternative method of Rosenberg which is to operate in conjunction with each other, the mouse/cursor vertical movement would still be disabled once the menu is open, for the highlighter to control movement within the menu and since the wheel does not have horizontal movement then the mouse/cursor will not have capability of moving horizontally.

Second Ground of Rejection – 35 U.S.C. 103(a) rejection of claims 7 and 23-24 as being unpatentable over Rosenberg

Claim 7

Appellant argues Rosenberg as applied by the Examiner fails to teach or suggest the claim feature that "the menu is closed by a relative movement of the menu item focus out of the menu". The Examiner's obviousness rejection is traversed as being evidentially unsupported, because the Examiner has failed to cite any teachings or suggestion in the art or Rosenberg in support of the holding of obviousness.

The Examiner disagrees.

In response to Appellant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in *the knowledge generally available to one of ordinary skill in the art* (emphasis added). See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the supporting reference Rosenberg in addition to what is know to one skilled in the art were clearly presented why one skilled in the art would have combined the teachings. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known methods according to their established functions, it can be important to identify a reason that would have prompted a person

of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. Additionally one must take into account of the inferences and creative steps that a person or ordinary skill in the art would employ.

Therefore is would have been obvious to one skilled in the art at the time the invention was made to have included the scrolling functionality within a mouse to which is known to the skilled artisan for a user to use a scroll wheel to scroll through menu items and if a user scrolls past the last menu item, then the menu will close, such as that of using a mouse pointer, that will close a menu when the pointer is out of the menu area. The motivation of having a scroll wheel that will close a menu by a relative movement of the wheel is to eliminate additional input actions by the user.

Claim 24

Appellant argues that Rosenberg as applied by the Examiner fails to teach or suggest the claim feature that "the menu closing item is positioned within the menu at a place unreachable by the one-dimension actuator".

The Examiner disagrees.

The disputed claim language reads:

The method of claim 21, further comprising

closing the menu by selecting a menu closing item with the pointer controlled by the two-dimension actuator,

herein the menu closing item is positioned within the menu at a place unreachable by the one-dimension actuator.

As discussed above Rosenberg allows the one or two dimension actuator to select a menu item. Fig. 9 displays an "exit" menu item in the menu, which will cause the user to exit the system that ultimately closes the menu. It would be reasonably suggestive to one skilled in the art to have a menu with a "close" menu item for selection that would close the menu such as that of pop-up or boxed menus, which are selectable by a mouse pointer, due to the lack of a wheel to move in any other direction other than up and down, for quick closing of a menu.

To further clarify the Examiner's previous position of the menu at a place unreachable by the one-dimension actuator, the analysis should additionally be taken in consideration with the analysis of claim 21 from which it depends, that provides combining the functions of both the wheel and mouse/cursor. The wheel only having vertical movement would not be able to access the horizontal menu and therefore a mouse pointer would be needed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Andrea N Long/

Examiner, Art Unit 2176

Conferees:

/Doug Hutton/
Doug Hutton
Supervisory Primary Examiner
Technology Center 2100

/Rachna S Desai/
Rachna S. Desai
Primary Examiner, Art Unit 2176